APPEAL NO. 022285
FILED OCTOBER 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 14, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, that the claimant did not have disability, and that the respondent (carrier) did not waive its right to contest compensability. The claimant appeals the hearing officer's disability determination, arguing that it was contrary to the evidence. The carrier responds that the decision of the hearing officer was supported by the evidence. We note that the waiver issue is unappealed and has become final pursuant to Section 410.169, but point out to the parties that the Texas Workers' Compensation Commission is now following the Texas Supreme Court decision in Continental Casualty Company v. Downs, No. 00-1309, decided June 6, 2002. *See* Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002. We also note that the hearing officer's finding that the claimant sustained a compensable injury is unappealed and has also become final. The finality of the hearing officer's finding of a compensable injury means that his failure to apply Downs does not affect the final decision in this case regarding compensability.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer as reformed.

The issue before us on appeal is disability. The hearing officer found that the claimant did not have disability. Disability is a question of fact. Texas Workers' Compensation Commission Appeal No. 93560, decided August 19, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so

contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. Texas Workers' Compensation Commission Appeal No. 92285, decided August 14, 1992; Texas Workers' Compensation Commission Appeal No. 92167, decided June 11, 1992. However, as an interested party, the claimant's testimony only raises an issue of fact for the hearing officer to resolve. Escamilla v. Liberty Mutual Insurance Company, 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). In the present case the hearing officer found no disability contrary to the testimony of the claimant and some medical evidence. The claimant had the burden to prove he had disability. Applying the standard of review set out above, we cannot say that the hearing officer was incorrect as a matter of law in finding that the claimant failed to meet this burden. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

The claimant argues that at a minimum the carrier should be liable for the medical expenses for his injury. We note that the hearing officer has found a compensable injury. Therefore, pursuant to Section 408.021, the claimant is entitled to lifetime medical benefits, which are defined as "all health care reasonably required by the nature of the injury as and when needed."

The decision and order of the hearing officer are affirmed as reformed.

The carrier's representative certified that the true corporate name of the insurance carrier is **DISCOVERY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Susan M. Kelley
Appeals Judge